PB84-156884

Construction Grants
Delegation and Overview Guidance

(U.S.) Environmental Protection Agency
Washington, DC

Dec 83

U.S. Department of Commerce
National Technical Information Service
NTIS

United States
Environmental Protection
Agency

Office of Water
Program Operations(WH-547)
Washington DC 20460

December 1983

PB84-156884

OMB Clearance 2000-0417 Expires June 30,1986

EPA

Construction Grants Delegation and Overview Guidance

REPRODUCED BY
NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA. 22161

TECHNICAL REPORT DATA

(Please read Instructions on the reverse before completing)

1. REPORT NO.	2.	3. RECIPIENT'S ACCESSION NO.
		PB84 156884

4. TITLE AND SUBTITLE	5. REPORT DATE
"Construction Grants Delegation and Overview Guidance"	December 1983
	6. PERFORMING ORGANIZATION CODE
7. AUTHOR(S)	8. PERFORMING ORGANIZATION REPORT NO.
9. PERFORMING ORGANIZATION NAME AND ADDRESS Office of Water Program Operations U.S. Environmental Protection Agency Washington, D.C. 20460	10. PROGRAM ELEMENT NO.
	11. CONTRACT/GRANT NO.
12. SPONSORING AGENCY NAME AND ADDRESS Office of Water Program Operations U.S. Environmental Protection Agency Washington, D.C. 20460	13. TYPE OF REPORT AND PERIOD COVERED
	14. SPONSORING AGENCY CODE 700/02

15. SUPPLEMENTARY NOTES

16. ABSTRACT

The purpose of this document is to integrate into one package all the relevant regulatory requirements, policy, and guidance for the management of the construction grants program delegation under Section 205(g) of the Clean Water Act.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Construction Grants Delegation		

18. DISTRIBUTION STATEMENT	19. SECURITY CLASS *(This Report)* Non-Sensitive	21. NO. OF PAGES 63
	20. SECURITY CLASS *(This page)* Non-Sensitive	22. PRICE

EPA Form 2220-1 (Rev. 4-77) PREVIOUS EDITION IS OBSOLETE

ACKNOWLEDGMENTS

This document was prepared by the Environmental Protection Agency, Office of Water Program Operations, with the assistance of a Regional work group.

The EPA staff was supported in this effort by The Synectics Group, Inc., Contract No. 68-01-6629.

NOTE

The term "overview" is used in this guidance to follow the terminology of 40 CFR Part 35, Subpart J, the applicable Section 205(g) regulation. The Sept. 1983 Task Force Report on State/Federal Roles and the Administrator's Policy on Delegation both use the term "oversight". It is our intent that the two terms be used interchangeably, without difference in meaning or practice. However, the oversight policy to be issued by EPA in January includes more than just review and evaluation of State programs which is the basic thrust and direction of this document.

PREFACE

Over the past several years, EPA has aggressively pursued a policy of delegating significant and real project-level authority in the construction grants program to capable and willing States. To date, most States have signed delegation agreements and are in various stages of completing delegation. The challenge facing EPA is to maintain current and viable delegation agreements and develop and improve overview of State performance that is not overly intrusive in State activities and prerogatives.

The Construction Grants Delegation and Overview Guidance was developed to provide information and offer suggestions on successfully delegating authority to States and conducting effective, results-oriented overview. It reflects EPA's experience in these matters gained over the past few years and attempts to address and enlarge, where possible, the role of delegated States.

This guidance is the product of significant contributions of effort by individuals throughout the construction grants and related water programs. A Regional work group added their considerable expertise to the original Headquarters draft. The document was extensively reviewed by Regions, States, and various Headquarters offices. The resulting comments were carefully considered before this final version was completed.

I believe this guidance will become a valuable tool to managers and staff throughout the construction grants program. I suggest that Regions and States study this guidance to determine which provisions are applicable and useful. Implementation may then begin immediately.

Henry L. Longest II
Director
Office of Water Program Operations
Office of Water

TABLE OF CONTENTS

PAGE

1. PURPOSE, USE, AND PRINCIPLES. 1

PURPOSE AND USE OF GUIDANCE. 1
SCOPE OF THE GUIDANCE. 2
ROLES AND RESPONSIBILITIES IN A DELEGATED PROGRAM. 3
PRINCIPLES OF DELEGATION MANAGEMENT AND OVERVIEW. 5

2. OVERVIEW OF PERFORMANCE 7

INTRODUCTION 7
PLANNING THE ANNUAL PROGRAM. 9
DESIGNING THE PLAN FOR OVERVIEW 9
NEGOTIATING ANNUAL OUTPUTS AND COORDINATING WITH THE 205(G) ASSISTANCE APPLICATION. 13
MONITORING AND EVALUATING PROGRAM PERFORMANCE. 13
PERIODIC MONITORING OF PROGRESS 13
CONDUCTING THE ANNUAL ON-SITE EVALUATION. 13
BASIC EVALUATION METHODS USED FOR OVERVIEW 17
USING OTHER EVALUATION TECHNIQUES. 20

3. DELEGATION AGREEMENT MANAGEMENT 21

REVIEW OF EXISTING DELEGATION AGREEMENTS 21
REVISING THE AGREEMENTS. 21
THE UMBRELLA AGREEMENT. 22
THE FUNCTIONAL SUBAGREEMENTS. 24
STRIVING FOR FULL DELEGATION IN FUNCTIONAL SUBAGREEMENTS 27
PROJECTS WITH OVERRIDING FEDERAL INTEREST 31

PAGE

4. SPECIAL REGULATORY REQUIREMENTS 32

CERTIFICATION (SECTION 35.3020). 32

REVIEW OF STATE DECISIONS UNDER DELEGATION (SECTION 35.3030) 33

CONSTRUCTION GRANTS ACTIVITIES ELIGIBLE UNDER A SECTION 205(G) CONSTRUCTION MANAGEMENT ASSISTANCE AGREEMENT (SUBPART A). 35

PUBLIC PARTICIPATION (SECTION 35.3035) 36

5. NATIONAL INFORMATION NEEDS AND REPORTING. 38

PROJECT-SPECIFIC INFORMATION 38

SUMMARY MANAGEMENT AND PLANNING DATA 38

APPENDIX A: THE DELEGABILITY OF CONSTRUCTION GRANTS ACTIVITIES. A-1

APPENDIX B: CONSTRUCTION GRANTS PROGRAM AND MANAGEMENT OBJECTIVES (REGION V) B-1

APPENDIX C: ALLOWABLE COSTS UNDER CONSTRUCTION MANAGEMENT ASSISTANCE (CMA) AGREEMENT. C-1

LIST OF TABLES AND FIGURES

		PAGE
TABLE 1.1	ROLES AND RESPONSIBILITIES.	4
TABLE 2.1	SUGGESTED EVALUATION METHODS: FREQUENCY OF USE IN EACH PHASE OF DELEGATION	19
FIGURE 2.1	THE OVERVIEW PROGRAM.	8
FIGURE 2.2	DESIGNING THE PLAN FOR OVERVIEW	12
FIGURE 2.3	SAMPLE ANNUAL OUTPUTS AND PLAN FOR OVERVIEW FOR ONE PERFORMANCE AREA.	14

CHAPTER 1

PURPOSE, USE, AND PRINCIPLES

PURPOSE AND USE OF GUIDANCE

In the process of delegating the construction grants program to the States, EPA management has shifted emphasis from project-level decisionmaking to assessing performance against overall program and management objectives. This guidance document reflects that shift and is designed to provide information and assistance on how to manage and oversee the construction grants program under State delegation.

The purpose of this document is to integrate into one package all the relevant regulatory requirements, policy, and guidance for the management of the construction grants program delegation under Section 205(g) of the Clean Water Act. It supplements the delegation management regulations (40 CFR part 35, Subpart J) and the regulations governing financial assistance for all continuing environmental programs (40 CFR Part 35, Subpart A).

This document does not set policy or requirements for managing the program under delegation. Where policy and requirements are mentioned in the text, their regulatory source is noted.

The last guidance written on delegation management (POM 78-5) was issued in 1978, and provided direction for managing a program in the early stages of delegation. This document supercedes POM 78-5. The key change is the addition of a methodology for reviewing the conduct of the delegated construction grants program on a continuing basis. It also recommends a simplified delegation agreement structure that will facilitate update of agreements and management of the administrative aspects of delegation. The changes should allow Regions and States sufficient flexibility to address their individual circumstances while still meeting national requirements and monitoring needs.

The guidance should not disrupt successful State programs in the 48 States with 205(g) assistance agreements or increase the paperwork burden for any State beyond that required by regulation. Procedures and approaches laid out in this guidance package are consistent with the overall Regional approach to delegation management across all programs.

SCOPE OF THE GUIDANCE

This guidance document will address four major issues critical to construction grants program operations under delegation. Each is discussed in a separate chapter, as indicated below. The guidance is tailored for the use of operating level program staff.

- The Overview Process--As State delegation progresses, a results-oriented overview approach is necessary to ensure effective management of the program and protect federal interests. Chapter 2 describes a workable EPA overview approach and provides recommendations on the process, structure, and content of Region/State overview.

- Delegation Agreement Management--Delegation agreements are the foundation of the Region/State relationship. Chapter 3 discusses the purposes of the agreement, the recent regulatory and policy changes, projects of overriding federal interest, and the need to strive for full delegation. Recommendations are made towards improving delegation management in a fully delegated program.

- Special Regulatory Requirements--Several types of regulations affect construction grants delegation and overview. Chapter 4 summarizes the requirements for technical and regulatory information on State certifications, reviews of State decisions under Section 205(g), activities eligible for a 205(g) assistance agreement, and public participation. Administrative procedures for implementing those requirements are recommended.

- National Information Needs and Reporting--While EPA Headquarters is no longer directly involved in many project activities, it remains responsible for the national program. Chapter 5 discusses the management information needed to assess progress towards program goals, manage the national program in a fiscally responsible manner, and respond to information requests.

ROLES AND RESPONSIBILITIES IN A DELEGATED PROGRAM

Management of a delegated program must respond to changes in roles and responsibilities of both EPA and the States as delegation proceeds. The intended relationship under delegation is best characterized as a partnership, with control and responsibilities for program management placed where law, custom, and operating efficiency deem most appropriate.

Both EPA and the States have continuing roles and responsibilities under the delegated programs. States are most suited to address unique problems as they arise on a day-to-day basis. The Regions should strive to strengthen and assist these State programs. Although State delegations in no way relieve the EPA Region of its statutory responsibilities, these responsibilities are best executed through a mutually supportive relationship.

The primary roles and responsibilities associated with the management of the delegated construction grants program for each program participant are shown in Table 1.1, and are defined under the broad categories of policy, program management, and program operations. The central role of the State in managing the program under delegation is reflected in each of these broad categories. The Region provides the principal EPA leadership and support for the State, and is responsible for overview of State performance. Headquarters, as before, sets national policy and priorities and is the principal contact with OMB and Congress.

To facilitate EPA's shift from project management to program overview, two actions may be necessary to adjust to a delegated situation. First, delegation agreements should be amended, where necessary, to reflect the role of both the Region and the State under full delegation. Second, Regional managers should focus their effort on making this shift operational by providing appropriate guidance to staff and ensuring that it is implemented.

TABLE 1.1 ROLES AND RESPONSIBILITIES

FUNCTIONAL CATEGORY	EPA HEADQUARTERS	EPA REGIONAL OFFICE	STATE OFFICE	CORPS OF ENGINEERS
POLICY	• Developing and overseeing the implementation of national policies and regulations to achieve legislative goals and national program objectives.	• Participating in the development of regulations and policies as well as national objectives. • Implementing policies and regulations through amendments to delegation agreements and other actions.	• Participating in the development of program priorities, policies, and regulations. • Applying national and regional policies and objectives while, at the same time, accommodating State and local environmental needs and priorities.	
PROGRAM MANAGEMENT	• Developing national program objectives and directions, establishing priorities, and identifying measures of national program achievement.	• Developing annual Regional program plans, including negotiation of State program plans consistent with the objectives of the Regional program plan. • Maintaining management systems to track program plans. • Developing, negotiating, and executing basic State delegation agreements with associated subagreements and updates thereto.	• Developing a comprehensive State program plan that addresses the national objectives and reflects State-specific objectives and regulatory requirements. • Maintaining a management system that includes communication procedures to reflect the status of program accomplishments. • Participating in the development, negotiation, and execution of the basic delegation agreement and associated subagreements, and revisions thereto.	• Maintaining a management system to track and report status of program functions assigned by the EPA/Corps Agreement.
	• Managing national Corps IAG and allocating resources to each Region.	• Developing, negotiating, and executing Regional EPA/Corps Agreement.	• Participating in an advisory capacity in development of the Regional EPA/Corps Agreement.	• Participate in development, negotiation, and execution o the Regional EPA/Corps Agree ment.
	• Managing the National Construction Grants Budget.	• Managing the Regional Construction Grants Budget, including support to national budget preparation.	• Managing the State Construction Grants Budget, including data support for EPA budget process.	
	• Evaluating the results and effectiveness of national program accomplishments for feedback to the Administration, OMB, and Congress.	• Evaluating the State and Corps progress toward annual outputs and their compliance with delegation agreement requirements and conditions.		• Participate with the Region the evaluation of delegated programs through the CME and other techniques.
	• Coordinating responses to information requests from within and outside the Agency.	• Preparing responses to informa- requests.	• Assisting in the preparation of responses to information requests to EPA.	• Assisting in the preparation of responses to information requests to EPA.
PROGRAM OPERATIONS		• Monitoring State operations and responding to requests for guidance.	• Managing day-to-day operations in accordance with provisions of delegation agreement.	
	• Performing program functions reserved to Headquarters (AT projects with incremental cost >$2M, and assistance agreement concurrence).	• Performing the non-delegable functions of the program and the not yet delegated portion of the program, including involvement in projects of overriding federal interest.	• Funding and administering high quality projects to meet program and management objectives.	• Performing assigned program functions and special assignments which have not been delegated to the State.
	• Serving as a clearinghouse for technical and administrative information and directives and providing other technical assistance as requested.	• Providing technical assistance to State program staff and to recipients of EPA funds when requested.	• Providing technical assistance to recipients of EPA funds.	• Providing technical assistanc and training to State staffs.

Reproduced from best available copy.

PRINCIPLES OF DELEGATION MANAGEMENT AND OVERVIEW

The various regulations and policy related to construction grants delegation (primarily Subpart J and the Administrator's policy on delegation and overview) define a set of operating principles that serve as the foundation for delegation management and overview of program performance. The underlying purpose of all the operating principles is to ensure that funded projects are environmentally sound, of high quality, and that their management is free of waste, fraud, and abuse. The principles presented in the following section address (1) what and how much should be delegated; (2) which agencies have accountability under full delegation; and (3) the contents, structure, and relationship among the parties of a results-oriented overview system.

Extent of Delegation (See 40 CFR Part 35, Subpart J)

1. States should be encouraged to undertake all project-level activities, including preliminary determinations for nondelegable requirements. (A suggested list of delegable activities is contained in Appendix A.)

2. Delegation requests should be denied only when a State clearly lacks the minimum legal authority and technical capability necessary to achieve program assumption or has insufficient staff to begin to perform the delegated functions.

3. EPA and the States should ensure that the State does all possible work on each delegated function. Where EPA maintains a review role, the State should prepare all documentation in anticipation of EPA's approval and signature.

4. The Corps of Engineers may continue to perform key program activities and undertake special assignments in support of State management under delegation. However, it is EPA's long-term intention, as confirmed in the national Corps interagency agreement, to have delegated States assume those activities now being performed by the Corps as soon as the State is able to do so.

5. Official project files are to be maintained by the State.

6. The Grants Information Control System (GICS) data collection and entry should be handled by the entity who has most of the data, the delegated States.

Accountability (See 40 CFR Part 35, Subpart J)

7. Under full delegation, the State is accountable for management of the program, even if certain activities are performed by EPA Regions (grant offer), the Corps of Engineers (interim inspections), or other entities.

8. EPA has overall responsibility for assuring that federal requirements are adhered to and progress toward national goals and objectives is maintained. Accordingly, EPA will establish overview procedures to ensure that the program is operating properly.

Management and Overview

9. EPA's overview of the construction grants program should focus on overall performance, including environmental and fiscal results, national standards, and legislatively mandated requirements. Basic overview principles are:

- o The overview program should be comprehensive, covering State, EPA and Corps activities.
- o Overview and evaluation will be based on integrated, multi-year objectives, negotiated with each State and designed to achieve both environmental and management results.
- o The overview program will be results-oriented and will encourage State flexibility to achieve goals in the most cost-effective fashion.
- o Measures of program performance should be established in advance after collaboration and agreement between EPA and State program managers.
- o Monitoring and evaluation of program performance will include input from program "clients" (recipients, the public, State elected officials, etc.)
- o Feedback to improve and ultimately to optimize program performance will be emphasized, as will early warning of emerging problems.
- o An overview finding of serious and sustained State non-performance may, if negotiation fails, lead to modification or withdrawal of the delegation agreement and termination of 205(g) financial assistance (40 CFR 35.150).

10. EPA should ensure that States have maximum latitude to determine how they meet the requirements of delegation, consistent with applicable laws and regulations.

11. When a new program responsibility is imposed, the States should participate in the development of procedures and administer the new delegable activities from the start. Interim procedures can be used, if necessary, until a new subagreement can be incorporated into the delegation agreement.

12. EPA will strive to build and maintain State capability to manage authorized environmental programs through the provision of training and in-house expertise.

13. After a function has been delegated, State certification and technical judgments should generally be acceptable to EPA without extensive review of supporting documents. The scope of the Regional review should vary according to the size, environmental significance and controversy of the project.

14. EPA will consult with States to solicit review and comment on regulatory, policy, and procedural documents having an impact on the delegation process or State interests.

CHAPTER 2

OVERVIEW OF PERFORMANCE

INTRODUCTION

Overview of the program under delegation will work effectively only if accountability for performance is clear and the specific monitoring and evaluation activities are well conceived and systematically implemented. At a minimum, overview should be tailored to the individual Region-State situation using a mixture of activities, be jointly agreed to between the Region and State, be known in advance, and be integrated into day-to-day Regional management of delegation. The overview program described here is designed to meet these needs.

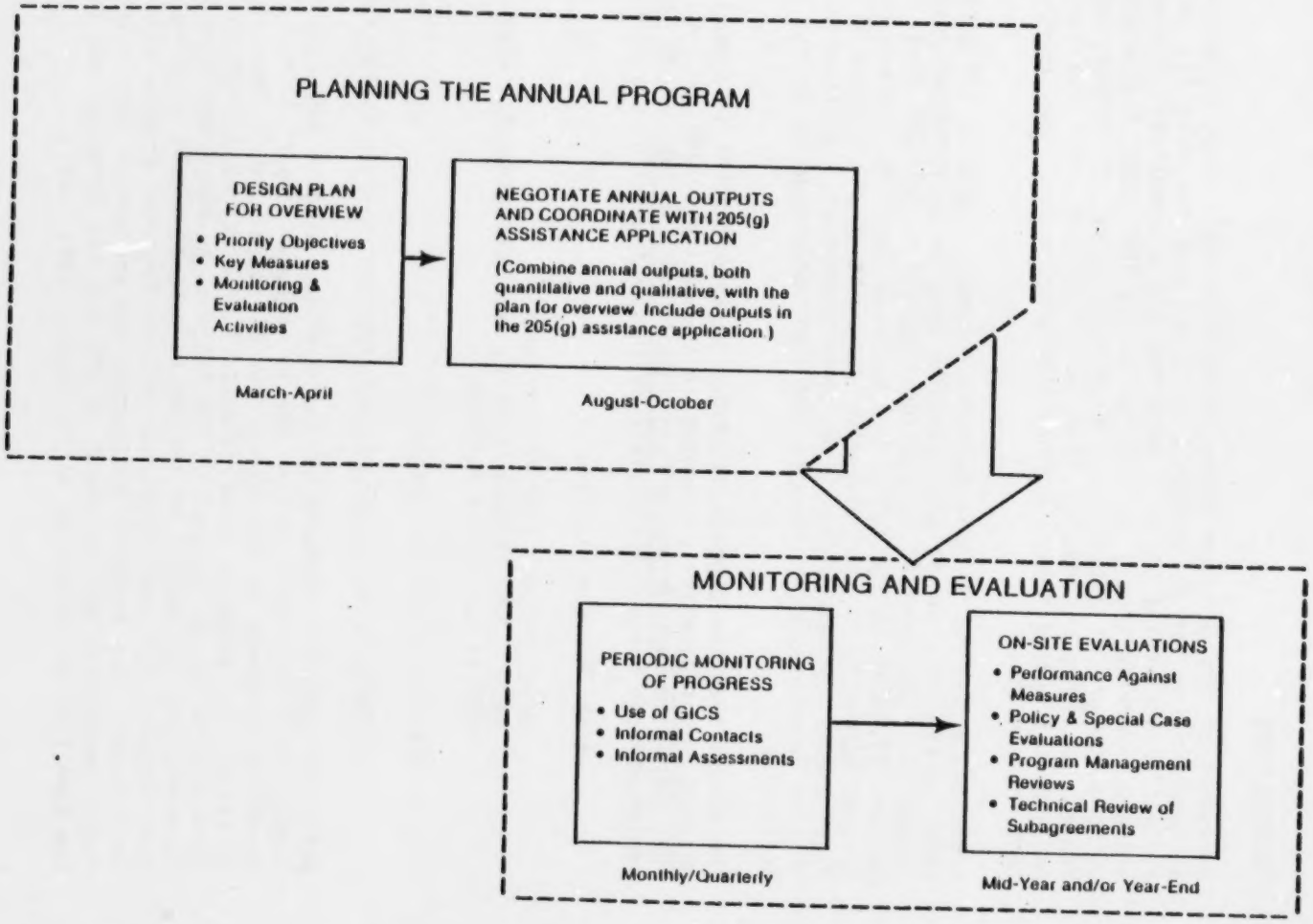
Overview, as defined in this guidance document, includes all activities undertaken by EPA in planning and reviewing program performance under a delegated situation. The revised delegation regulation (40 CFR Part 35 Subpart J, Section 35.3025) is the basis for overview, and the individual Region/State process agreed to in the delegation agreement should contain all the relevant requirements for overview. The term "overview" specifically excludes the project level decisions made by EPA for non-delegable or not yet delegated activities.

The annual overview process described in this chapter is comprised of annual program planning, which culminates in the documentation of a work program for the year, and monitoring and evaluation activities, which constitute the implementation stage. The activities involved in each (see Figure 2.1) are:

- o Annual Program Planning
  - -- Designing the Plan for Overview
  - -- Negotiating Annual Outputs and Coordinating with the 205(g) Assistance Agreement
- o Monitoring and Evaluation
  - -- Periodic Monitoring of Progress and On-Site Evaluations

While the specific features of the overview program may vary from State to State, each Regional office should ensure compatibility with schedules currently observed in the Agency and as stipulated in the annual operating guidance. For example, establishment of priority objectives by the Region and State should follow issuance of the national guidance and resource targets set in March, and development of the annual outputs should coincide with Headquarters' request for, and acceptance of, the Regional program plan in September. In this way, the national monitoring and evaluation activities that support Agency management and the needs of OMB and the Congress are consistent with the same kind of activities at the Region/State level.

FIGURE 2.1 THE OVERVIEW PROGRAM


PLANNING THE ANNUAL PROGRAM
DESIGN PLAN FOR OVERVIEW
• Priority Objectives
• Key Measures
• Monitoring & Evaluation Activities
March-April
NEGOTIATE ANNUAL OUTPUTS AND COORDINATE WITH 205(g) ASSISTANCE APPLICATION
(Combine annual outputs, both quantitative and qualitative, with the plan for overview. Include outputs in the 205(g) assistance application.)
August-October
MONITORING AND EVALUATION
PERIODIC MONITORING OF PROGRESS
• Use of GICS
• Informal Contacts
• Informal Assessments
Monthly/Quarterly
ON-SITE EVALUATIONS
• Performance Against Measures
• Policy & Special Case Evaluations
• Program Management Reviews
• Technical Review of Subagreements
Mid-Year and/or Year-End

Note: The dates and time elements in this flow chart are suggested only, to indicate the time of year or frequency at which each part of the process is expected to take place. The March-April time period for designing the plan for overview is consistent with the issuance of the Annual Operating Guidance to the Regions.

PLANNING THE ANNUAL PROGRAM

Designing the Plan for Overview

The planning process for the upcoming year starts with the development of the proposed plan for overview. This planning effort is intended to determine what is important for overview in the comming year, how a successful program will be measured, and what the Region will do to assess program accomplishments. The results of this effort should be described in a written plan for overview that is initially drafted by the Region and jointly discussed and agreed to by the State and the Region early in the planning process. The plan has three parts:

Part 1. The identification of priority objectives to be pursued.

Part 2. The specification of key measures of performance by which progress toward those ojectives will be evaluated.

Part 3. The outlining of monitoring and evaluation mechanisms (including State reporting to EPA) that will be employed during implementation.

The planning process should reflect the national directions published in the annual operating guidance, the feedback from prior years' performance, and a joint assessment of issues and problems for the upcoming year for each specific State.

Figure 2.2 shows the process followed in designing the plan for overview and gives an example of each of these three parts for one priority objective, including the key measures and preliminary monitoring and evaluation activities.

Part 1. Identifying Priority Objectives

The basis of the overview program is a list of priority objectives, developed through collaboration by States and the Region, and other interested parties. This list should be reviewed annually and updated as needed for continued relevance and for consistency with national directions identified in the annual operating guidance. Attention should be devoted to completing the yearly review and appropriate updating of the previous year's priority objectives before proceeding with further development of the annual overview process.

Priority objectives are also the basis for evaluating program performance, and for this reason they should embody a performance expectation (e.g., to improve compliance rate by 25%). Priority objectives should be results-oriented, and although they should focus on one area of performance, they should not be so specific as to constitute "bean-counting." Such specificity should be reserved for key measures of performance (see following section). The three examples presented below show (1) an objective that is too vague, (2) one that is too specific, and (3) one that is appropriate in tone:

1. Complete and closeout Step 3 and 4 projects.

2. Complete 9 projects and closeout 6 by mid-year and complete and closeout 4 more by August 23, 1983 in New Jersey.

3. Eliminate all existing backlog of projects requiring administrative completion by the end of FY 1983.

Program managers may find it helpful to distinguish between two types of objectives associated with program performance. Program objectives describe desired impacts of water media programs on the environment and community, and the goals of the Clean Water Act. Management objectives focus on those activities that are necessary to ensure effective program management and to protect Federal funds. Program objectives are likely to remain relatively constant over time, while management objectives may change to reflect new initiatives as conditions change. Both types of objectives--formulated with input from Headquarters, Regional and State program managers, and feedback from the prior year's evaluation--will drive the overview program for the coming year. They will serve as benchmarks for program direction and evaluation.

A list of objectives, developed by Region V, is provided in Appendix B. Region IV and North Carolina managers found this list helpful in developing the prototype work program that accompanies this guidance. All Regions need not prepare such a detailed list, but Appendix B can serve as a foundation for documenting Region/State specific objectives, and its use can save a great deal of time.

Part 2. Specifying Key Measures of Performance

Key measures of performance are the qualitative and quantitative indicators that will be used to assess progress toward fulfillment of each objective. The key measures will later form the basis for the annual State outputs negotiated in the work program, and be the line of inquiry in the monitoring and evaluation activities to take place during the year. It is important that these measures be identified and discussed with the State well in advance of the year. When specifying key measures of performance:

- Address those measures that are identified in the Office of Water Operating Guidance and Accountability System to evaluate the national program, although the addition of others tailored to the individual Region and State is both expected and encouraged.

- Focus on measures that gauge pivotal activities and processes, rather than simply trying to describe all the outputs of the program (i.e., select measures that indicate progress toward results, rather than simply those that describe resource usage).

Key measures are commonly presented in the form of evaluative questions, as shown in Figure 2.2. At least one key measure, qualitative or quantitative, should be identified for each priority objective.

The principal source of national data for monitoring progress for the key measures is the Grants Information Control System. Each Region and State should establish a process to monitor performance against each measure through existing information systems wherever possible. This should be identified in the monitoring and evaluation activities included in the plan for overview.

Part 3. Outlining Monitoring and Evaluation

Monitoring and evaluation activities should be selected to thoroughly and appropriately assess performance for each priority objective. Making this selection at the same time the priority objectives and key measures are identified is important to ensure that the plan for overview is achievable within resource limits and not burdensome.

The activities and methods chosen should:

- Mesh with current Agency reporting requirements and information systems;
- Concentrate on activities that assist the State in improving future program performance; and
- Include methods appropriate to the extent of delegation undertaken by each State and past program performance (i.e., tailor the activities to the specific situation in each year).

Regional managers can use an array of evaluative techniques in measuring progress toward fulfillment of priority objectives. Four basic techniques, as well as auxiliary tools, are described in the last section of this chapter, and should be reviewed for their applicability to the specific Region situation before developing the plan for overview.

The key aspects of defining the mix of activities are that they (1) are selected based on an analysis of what techniques are most effective to address areas of vulnerability and provide clear insight into performance, (2) all link to a specific priority objective, and (3) be agreed to in advance. The mix of activities should be appropriate to the phase of delegation and to past performance. The example in Figure 2.2 is for a State that has significant delegation, but still requires procedural review for a complete assessment (i.e., review of a specified percentage of actions related to the delegation subagreement on physical completion).

FIGURE 2.2 DESIGNING THE PLAN FOR OVERVIEW

PART 1: Determine Priority Objective

Eliminate any existing backlog of projects requiring administrative completion.

PART 2: Specify Key Measures

Quantitative Measures (plan vs. actual FY'83):

- % of closeouts to backlog at beginning of year
- # of physical completions
- # of administrative completions
- # of project closeouts.

Qualitative Measures:

- Were projects administratively completed in a timely manner (generally 6 months after physical completion)?
- Were projects closed out in a timely manner (generally 3 months after physical completion)?
- Is a strategy being developed to eliminate the Step 1 and Step 2 backlogs?

PART 3: Outline Monitoring and Evaluation Activities

- Obtain quantitative commitments, assess progress quarterly. Obtain qualitative commitments, assess progress at the on-site evaluation.
- Conduct case study of administrative completion process, to determine various office responsibilities, paper flow, and effectiveness of State management.
- Review State staffing levels for backlog elimination, including skill mix and training needs.
- Review 5% of all actions related to physical completion (subagreement B-3).

Negotiating Annual Outputs and Coordinating with the 205(g) Assistance Application

Once the plan for overview is agreed to and the funding and program assumptions for the upcoming year are relatively clear, the Region should negotiate annual outputs with the State. Outputs may be both quantitative and qualitative, and should be based on the key measures identified for each priority objective. Outputs should indicate the level of performance that the State and/or Region is expected to achieve in the upcoming fiscal year. These outputs then serve as benchmarks against which program progress is measured. Once negotiated, these annual outputs may be combined for convenience with the plan for overview (Figure 2.3).

The annual overview planning process provides the forum to negotiate the work program included in the Section 205(g) assistance application. The work program required as part of the Section 205(g) assistance application contains many of the same elements as both the annual overview program (i.e. negotiated annual outputs) and the delegation agreements (i.e. staffing, delegation schedule, and cost estimates). Where the assistance application covers a budget period beyond the annual overview program period, the assistance award may be made for the full budget period, contingent on future negotiation of outputs for annual overview of subsequent years of the budget period.

While the annual overview program is the focal point for planning, reporting, and evaluating the delegated States (including performance under the assistance agreement), the awarding of assistance should not be delayed because of schedule conflicts. Where the application for Section 205(g) assistance precedes the completion of the negotiation of outputs in the annual overview program, an award may be made in accordance with the requirements of Subpart A. The application must include a work program and outputs, which may be duplicative of the annual overview program process. To avoid such a problem, it is highly recommended that the overview program process be designed to complete negotiation of outputs before or simultaneously with the assistance application. In this way, duplication of effort is avoided and funds are provided in a timely manner.

MONITORING AND EVALUATING PROGRAM PERFORMANCE

Periodic Monitoring of Progress

This ongoing process consists of discussing general program issues and reviewing management reports generated through the Grants Information and Control System (GICS) and other sources. Information on the quarterly outputs and quantitative data will be used as a measure of program progress and as a vehicle for detecting potential problems and providing early feedback.

Conducting the Annual On-site Evaluation

On-site evaluation provides a structured forum for evaluating program performance, identifying issues, and discussing feedback to program operations. This personal interaction between State and EPA personnel is vital to fostering an effective delegation relationship and to ensuring feedback to all

FIGURE 2.3 SAMPLE ANNUAL OUTPUTS FOR ONE PERFORMANCE AREA*

PERFORMANCE AREA 3: COMPLETIONS/CLOSEOUTS

Priority Objective: Eliminate any existing backlog of projects requiring administrative completion.

Quantitative Outputs

The State will complete the following during the fiscal year 1983 (cumulative by quarter):

	Quarter 1	Quarter 2	Quarter 3	Quarter 4
• Steps 2+3/3 Physical Completion	1	3	6	7
• Administrative Completion	5	10	20	26
• Project Closeouts	3	8	9	10

Qualitative Outputs

- Projects will be administratively completed within 6 months after the COE final inspection unless additional work is authorized by the State in accordance with its contingency policy. Efforts will be made to do administrative completions of all existing backlog by September 30, 1983.
- The State will provide assistance as requested and as necessary to ensure projects are closed out within 3 months after the audit exceptions are resolved.
- The State will provide Region IV with a strategy for eliminating the Step 1 and 2 backlog by the end of the year.

Assumptions

- Requests by EPA for assistance for points 1 & 3 in the qualitative commitments above will be made in a timely manner (generally allowing State 30 days).
- One request for mid-course correction will be permitted upon request of State.

---

*"Performance area" is the convenient term used to refer to a priority objective and the measures and monitoring and evaluation activities that support it. Performance areas are often denoted by a number or short title such as "obligations/outlays."

FIGURE 2.3 (cont'd) SAMPLE PLAN FOR OVERVIEW FOR ONE PERFORMANCE AREA

PRIORITY OBJECTIVE	MONITORING AND EVALUATION ACTIVITIES*			
	PROGRESS AGAINST MEASURES	POLICY AND SPECIAL CASE EVALUATION	PROGRAM MANAGEMENT REVIEW	TECHNICAL REVIEW OF SUBAGREEMENTS
Eliminate any existing backlog of projects requiring administrative action.	Quantitative Output Monitored quarterly, plan vs. actual Qualitative Output Discussed at on-site evaluation	Special analysis of State efforts to eliminate backlog during the past year, to be performed in conjunction with first quarter management meeting.	Review adequacy of State staffing devoted to eliminating backlogs, prior to annual on-site evaluation.	Review 5% of all actions related to physical completion for compliance with subagreement B-3.

* The four monitoring and evaluation methods used in this sample work program are defined on pages 18 and 19.

parties. The basis for this evaluation is the negotiated outputs, the plan for overview and the assistance application. The latter provides the subject matter, measures, and methods for monitoring and evaluation. Both the progress in each priority objective and the technical aspects of the delegation agreement are covered in the evaluation. Detailed preparation by both parties is essential to the success of an on-site evaluation, as is close follow-up.

Planning

The frequency, participants, scope, contents, and procedures of an on-site evaluation will vary depending on management approach and individual circumstances. These topics should be planned before the visit and discussed in advance with State personnel. A review of State progress, activities, and data reports over the past year should be undertaken in preparation for the evaluation.

This advance planning will enhance the effectiveness of the on-site visit in several ways. First, it will assure that the ground rules defining a successful program are clear and jointly determined. Second, it will sharpen the focus of the evaluation by pinpointing areas needing evaluation. Third, those questions that can be answered by information on file will not need to be asked of State personnel. Fourth, the structure of the evaluation report will take shape as the directions to be pursued are clarified.

Frequency and Scope

The delegation regulation requires that an on-site evaluation occur at least once a year and cover--at a minimum--performance of State commitments toward fulfillment of agreed-upon priority objectives (Subpart J, Section 35.3025 (c)). It should include technical aspects of the individual delegation agreements, as appropriate, and a review of overall program management. Requirements under Subpart A for evaluating 205(g) assistance agreement performance (Section 35.150) should also be addressed at the same time. The timing of this annual visit is up to the Region and State, though coordination with the annual evaluation of the Regional Office by the Office of Water is suggested. More frequent visits may be conducted if it is considered necessary to meet management needs and in fact are suggested for those States in early phases of delegation.

Methods

As described above, the appropriateness of evaluation methods will vary with the extent of delegation undertaken by the State (see Table 2.1 in the following section, "Suggested Evaluation Methods: Frequency of Use in Each Phase of Delegation"). The on-site evaluation provides an excellent opportunity for the assessment of qualitative measures of performance, which may not be addressed through other channels (e.g., reporting requirements, monitoring). Evaluation of program management and technical reviews are also best performed during an on-site visit.

Implementation

The on-site evaluation may be performed solely by EPA Regional staff, or--if appropriate--by a mixture of Regional, State, and Corps staff. Several Regions have successfully employed peer review, using a special team approach. Team members are staff from both technical and program management areas. Their assignment is temporary, and members must often maintain their regular duties. For the purpose of continuity, it is recommended that the constitution of the team remain stable, and that the team visit all States in the Region. This approach has at least two advantages: it provides a fresh look at performance without the inherent biases formed from day-to-day contact with the State program, and it provides greater opportunity for cross-fertilization of ideas from one State program to another. All observations, recommendations, and new approaches should, however, be fed back to the appropriate Regional and State staff for action if the on-site evalution is to be effective.

Follow-Up

The results of the on-site evaluation should be documented in a timely follow-up report, which can assume whatever format is most useful to the individual Region and State. The report should include the results of the on-going monitoring taking place throughout the year; it should also cover all program and delegation issues necessary to identify problems, assign accountability for follow-up, and indicate how findings can be used to improve future program performance. Progress against priority objectives should be a principal topic, although its importance will vary based on extent of delegation and other factors. In those instances where the State has already satisfied the requirements of a particular priority objective, the Region can choose to downplay its evaluation and use the opportunity to evaluate another, more relevant, aspect of the program agreed upon by both parties.

Feedback

Feedback from the annual on-site evaluation should stress program improvement, rather than sanctions. EPA should provide a forum for feedback that both includes and addresses all parties in the program. Feedback must be timely and effective if it is to have a positive impact on program performance.

Sanctions should only be considered for serious and sustained State non-performance. If the recipient's performance under the delegation agreement and annual outputs is not satisfactory, negotiation should be attempted before the imposition of sanctions. If deemed necessary, sanctions should be consistent with the criteria specified in the delegation agreement. Modifying the agreement may be necessary to revise schedules, procedures or State authority. In addition, the Regional Administrator may terminate or annul the 205(g) assistance agreement (40 CFR 35.150 and Part 30). A Region considering termination or annulment of the agreement should consult with the national program manager on a case by case basis.

BASIC EVALUATION METHODS
USED FOR OVERVIEW

The mix of activities chosen to monitor and evaluate program performance should be tailored to the needs of the State and Region, the extent of delegation, and the management approaches common to the specific State and Region relationship. At a minimum, however, activities should be included that are particularly appropriate to evaluating the State's performance in funding and administering sound, high-quality projects. The evaluation methods most commonly employed in the construction grants program can be categorized into four basic methods. The mix of methods chosen to assess each priority objective should consider the following points.

- o Performance Against Quantitative/Qualitative Measures--This method uses key measures of performance to assess construction grants results against priority objectives. Its use in evaluation increases as States assume increasing program responsibilities and EPA's role moves away from project level decisions. The plan for overview provides for periodic review of performance in these critical areas. Often this review consists of periodically comparing actual performance to front end commitments negotiated in the work program. Analysis of progress through these indicators will give an early warning of potential problems in performance and allow for adjustment as circumstances change.

- o Policy and Special Case Evaluations--This method consists of an intensive review of one aspect of existing Region, State and Corps policies and practices to determine their effectiveness in achieving the priority objectives. It is used to delve deeply into an issue or subject that cannot be properly evaluated through routine performance monitoring. A single issue should normally be addressed only once every several years, although prior performance may affect its frequency. Such evaluations are particularly useful if focused on policies or activities that cut across organizational, functional, and hierarchical lines of responsibility. Examples include case studies of special initiatives (e.g. completions/closeouts, innovative/alternative technology) or major management and/or program responsibilties (e.g. CME's, outlay management analysis) to test their effectiveness.

- o Program Management Reviews--This method assesses the adequacy of EPA, State, and Corps program management towards achieving priority objectives. Its use depends on the amount of time the State has had delegation, the stability of the program, and prior performance. Significant changes in staffing, skill mix, priorities, or other institutional aspects may change the use of this method. The review may include an assessment of organizational structure and coordination responsibilities, use of 205(g) budget funds,

training, information systems, conformance with the delegation agreement, fiscal management, and others. The scope of this method will be determined by the priority objective being addressed, but will generally be more narrowly focused than a policy/special case evaluation.

- o Technical Review of Subagreements--This method consists of a review and detailed assessment of selected delegation subagreements directly related to the priority objectives. The extent of use of this method is directly related to the age of the subagreement and the relative confidence the Region and State have in the management of the specific activity. Such technical reviews of procedures usually require specialized training and knowledge and may be facilitated by the development of an evaluation guide for each subagreement (the Region IV prototype provide example subagreement evaluation guides). Included are functions such as facility plan review and environmental document preparation.

As delegation proceeds, the monitoring and evaluation methods employed should shift away from hands-on, process-oriented methods towards program performance-oriented methods. No evaluation method should be reduced to zero, however. Extent of delegation may be described in four phases: pre-delegation, initial delegation, delegation phase-in, and full delegation.* Table 2.1 shows the levels of appropriateness for each of the four methods in each of the four phases.

TABLE 2.1 SUGGESTED EVALUATION METHODS: FREQUENCY OF USE IN EACH PHASE OF DELEGATION

	Phase 1 Pre-Delegation	Phase 2 Initial Delegation	Phase 3 Delegation Phase-In	Phase 4 Full Delegation
Performance Against Quantitative/Qualitative Measures	Low	Medium	Medium	High
Policy and Special Case Evaluations	Low	Medium	Medium	Medium
Program Management Reviews	High	High	Medium	Low
Technical Review of Subagreements	High	High	Medium	Low

*These phases are described in detail in the Revised Construction Grants Resource Model, Final Report (July 2, 1982).

Using Other Evaluation Techniques

The four basic methods described above can be supplemented, as appropriate, by other evaluation techniques available to the Region and State managers. Their use, like all monitoring and evaluation activities, should be well justified, agreed to by the Region and State, and be designed to give feedback to improved program performance. These other techniques include special analyses, quality reviews, and evaluations by other groups (Inspector General, General Accounting Office). If planned ahead of time, use of these tools should be documented in the plan for overview. If they are applied spontaneously, in response to changing circumstances, the methodologies and results should be documented for future Region/State reference.

Special analyses are short-term, fact-finding exercises. Analysis may be required when a new priority objective (such as eliminating backlogs) is identified, or when a program requirement has resulted in a problem (e.g., facility plan reviews, processing change orders).

Quality reviews are spot checks of how a State is operating the program. Regions should choose two or three sample projects and review the major decisions involved in them, as well as their results. If the need arises, procedures should be examined as well. In a fully delegated mode, certifications should be accepted at face value, but periodic reviews are desirable to ensure continued high quality.

Evaluations by other groups provide additional valuable information to the overview process. Inspector-General audits often raise issues about program operations. GAO audits raise issues of particular interest to Congress and the legislation. Similarly, Construction Management Evaluations (CME) are case studies of particular projects that may provide detailed insight into State project management. Finally, day-to-day contact between Regional and State staff provides a wealth of information that may be used in a successful overview program. Through this informal contact, problems may be resolved, ideas exchanged, and successful new procedures communicated among Regions and States.

CHAPTER 3

DELEGATION AGREEMENT MANAGEMENT

REVIEW OF EXISTING DELEGATION AGREEMENTS

The delegation agreement documents the contractual relationship between a Region and each of its States. Existing delegation agreements and the management activities related to them may need review because:

- The construction grants program is changed significantly by the new regulations.
- Delegation agreement procedures and management are modified by the regulation governing financial assistance for all continuing environmental programs (subpart A) and the construction grants delegation (subpart J) regulations.
- Many States now have considerable experience under delegation and will operate more effectively with an agreement that is more reflective of the shift in roles.

The above reasons indicate how important it is for each Region to take a close look at its delegation agreements and associated operating procedures. The following sections offer recommendations that will bring agreements into line with regulatory requirements, encourage full delegation, and streamline agreement management.

REVISING THE AGREEMENTS

The basic purposes of the delegation agreement are (1) to serve as the "contractual" basis of the relationship specifying the responsibilities of each party, (2) to provide direction on the performance of the various functions, and (3) to act as a blueprint for achieving and maintaining full delegation.

The existing agreements are generally divided into three distinct parts:

- The Umbrella Agreement (also called "agreement in principle," "basic agreement," "front agreement"), which contains the basic commitment and framework for the agreement, including scheduling, cost information, hiring and training, accounting information, maintenance of the FY 1977 State level of effort, and other aspects necessary to define the Region/State relationship under delegation.
- Functional Subagreements (also called "functions," "appendices" or "supplements"), which detail the process, formats, roles, and evaluation criteria for each of the individual functions the State is to assume.

- Standard Operating Procedures, (also documented in Memoranda of Understanding) in the Regions that maintain them separate from the functional subagreements, contain the most detail on procedures the State should follow in performing the delegated functions. SOPs should decline significantly in importance as the State becomes fully delegated.

Guidance on reviewing and revising, if appropriate, the umbrella agreement and functional subagreements is provided in the following sections. The goal is to streamline the process through which revisions and additions are incorporated and approved. The umbrella agreement will contain all the durable elements of the agreement, and so will have to be approved only once by top management (sign-off by the Regional Administrator and the State Agency head). The functional subagreements, if designed in a skillful and consistent manner, can be expanded and revised easily; each time delegation moves forward, its documentation can be approved by the EPA Water Division directors or construction grants branch chiefs and their counterparts in the related State offices.

The Umbrella Agreement

Regulatory Changes

The significant program changes embodied in new regulations relating to delegation suggest that the umbrella agreements for most States be closely reviewed and, if necessary, revised or supplemented. The most significant changes from 40 CFR 35, Subpart J are as follows:

1. The overview process has been significantly revised, including new requirements for annual program planning and overview. Consequently, existing procedures for overview in delegation agreements may be incomplete. Overview should be based on results-oriented evaluation of State performance against priority objectives and measures agreed to in advance. (35.3005, 35.3025)

2. Delegable activities are no longer prescribed in the regulations; the list has been replaced by a general statement which allows States greater flexibility. (35.3015)

3. The delegation agreement should acknowledge the State's status regarding the "Sufficient Authority" provision under Section 219 of the Act (added by the 1981 Amendments). This is important to ensure that project certifications by eligible States receive prompt review by the Region. (35.3020)

4. Grantees must request State review of a project-level decision before contacting EPA with an appeal. (35.3030)

5. Public participation requirements may be satisfied by informal consultation with interested and affected groups. Resources for public participation overview and formal meetings need no longer be designated. (35.3035)

Revising the Umbrella Agreement

The goal of the revised umbrella agreement should be to set forth concisely the elements of the "contractual" relationship only, leaving management approaches or new program emphases to be covered under the functional agreements. The umbrella agreement should endure without change throughout the evolution of the State's delegation. Scheduling, staffing, training, and budget details may change, but updates are part of the assistance application, rather than changing the umbrella agreement. Once completed, this umbrella agreement should rarely require revision (e.g. respond to changes in statute or major changes in Agency policy). Thus, the approval and signature of the State Agency director and Regional Administrator must be secured only once.

The revised umbrella agreement should contain the following information:

- o Basic Responsibilities
  - State Unit Responsible for Implementation
  - Term of Agreement
  - Scope and Roles
  - Mechanism for Revising Delegation Agreements
  - Maintenance of the FY 1977 State Level of Effort
  - Definition of Sufficient Authority and Certification Procedures
  - Circumstances Necessitating Withdrawal of Delegation
- o Delegation of Functions
  - Delegable and Nondelegable Activities
  - Delegation Schedule*
  - List of Subagreements

---

*The items on the above list denoted by an asterisk are subject to periodic revision with the 205(g) assistance application. The initial application should include a schedule to achieve full delegation and a summary budget covering at least the first year's delegated functions but otherwise not duplicate material in the umbrella agreement. Subsequent applications, however, need only reference the original agreement and therefore updated material relating to grant administration should be submitted. This includes:

- o An updated schedule of the assumption of delegated functions (the Headquarters-maintained delegation matrix may be used for this purpose);
- o An updated State staffing and hiring plan; and
- o An updated budget and expenditure data for 205(g) funds, in a format that will assist the Regions in preparing data for the Headquarters 205(g) tracking system.

- o Program Administration
  - Staffing, Hiring, and Training Needs*
  - Records to be Kept
  - Program Costs by Year for the Term of the Agreement (in constant dollars or a formula applied across all States within a Region)*
  - Additional Allowable Activities under 205(g)
  - Public Participation
  - Appeals of State Decisions
- o Overview
  - Overview Procedures
  - Information Management
  - Procedures for Determining Projects of Overriding Federal Interest
  - Procedures for Revising or Terminating Agreement Due to State Non-performance

Before proceeding with revisions to the umbrella agreement, Regional managers should carefully assess each State umbrella agreement and decide whether it would be better to draft it anew or to amend what exists. The result need not be a long document: it should be possible to detail all the required information in 10 to 20 pages.

The Functional Subagreements

Statutory and Regulatory Changes

The recent statutory and regulatory changes make certain specific revisions necessary to the functional subagreements. Generally, a distinction must be made between all grants made prior to May 12, 1981 (when the Subpart I regulation was issued in interim final) and those awarded after that date. The earlier grants will continue to be bound by existing requirements and law. Those that follow, however, will be treated under the revised statute and regulations. All functional subagreements should clearly reference which regulations apply.

Where appropriate, delegation agreements should be revised to reflect the following regulatory changes and developments (from 40 CFR 35 Subpart I, and Appendix B):

1. The elimination of Step 1 and Step 2 grants (after enactment of the 1981 amendments on December 29, 1982), which effectively prohibits federal involvement during the facilities planning and design stages. (35.2025, of 40 CFR 35 Subpart I and Appendix B)

2. The establishment of planning and design allowances which may accompany Step 2 & 3 and Step 3 grant agreements. (35.2025, 40 CFR 35 Subpart I, Appendix B)

3. Advances of the planning and design allowance which now may be offered to small communities from a State grant reserve, should also be reflected in delegation agreements. (35.2025(b), 35.2020(e))

4. Water quality management planning (205 j) grants to States (from reserved funds) are to be used in part for the development and use of a Priority List System that reflects water quality criteria. (35.2023, 35.2020(d))

5. Grant assistance from any funds appropriated under Section 201(n)(2) of the Clean Water Act may be available to municipalities for correction of combined sewer overflow problems in marine bays and estuaries. Funding will be based on the State's demonstration that impaired uses and public health risks can be effectively addressed by the project and the extent to which the project satisfies regulation criteria. (35.2024)

6. The increase in the reserve for innovative/alternative (I/A) projects, mandated by the 1981 Amendments, has been reflected in the new regulations. Increased resources will be devoted to completing I/A reviews. (35.2032)

7. States with "sufficient authority" must now furnish written certification of compliance with all federal requirements on grant applications, and EPA must approve or disapprove the grant within 45 days. Certification must be supported by documentation specified in the Delegation Agreement. (35.2042)

8. Grant assistance for advanced treatment may be awarded only after an AT review has been conducted. EPA recommends that potential grant applicants obtain this review prior to initiation of design. (35.2101)

9. Water quality standards must be reviewed and revised by States as per Section 303(c) of the Clean Water Act prior to 12/29/84 in order for the State to remain eligible for grant assistance. (35.2111)

10. NEPA determinations are no longer required during the planning phase (formerly Step 1), but applicants are encouraged to confer with review agencies (State or EPA) and request in writing that the necessary NEPA determinations be made during an early stage of the project. (35.2113)

11. User charge systems must now include a financial management system that will accurately account for revenues generated by the system annd expenditures for operation, maintenance and replacement of treatment works. To receive Step 3 grant assistance, unless solely for acquisition of eligible land, an applicant must obtain approval of it's user charge system. (35.2122)

12. Grant assistance for reserve capacity is being phased-out. Step 3 grants approved prior to 12/29/81 may receive funds for up to 40 years reserve capacity. Step 3 grants awarded between 12/29/81 and 10/1/84 may include funds for 20 years of reserve capacity. All grants made after 9/30/84 shall fund only capacity necessary to serve existing needs, but in no case greater than existing needs on October 1, 1990. (35.2123)

13. Grantees must certify, one year after the initiation of project operation, that the project is capable of meeting performance standards. If the project does not yet meet these standards the grantee must submit a corrective action report and begin taking steps to remedy problems under EPA or State overview. (35.2218(c) and (d))

14. The new regulations encourage States to give priority to completion and closeout of phased/segmented projects. (35.2015)

15. The grantee shall not acquire real property determined allowable for grant assistance until the Regional Administrator has determined that applicable provisions of 40 CFR Part 4 have been met. (35.2210)

Revising the Functional Subagreements

The functional subagreements prepared by most Regions were never expected to endure periodic statutory, regulatory, and administrative changes without revision. A cursory review of Regional experience has shown that, in some cases, the volume and nature of the needed changes has either (1) been considered too much work to keep current and resulted in the circumvention of the subagreement formally or informally, or (2) the changes have been made piecemeal, resulting in subagreements "bandaged" beyond the point where they are useful management tools.

To address this problem, Regional managers should revise functional subagreements to both include activities required by the new regulations and policy, and be more responsive to the administrative, fiscal, and technical directives on program operations issued by various EPA Headquarters offices. To facilitate this, subagreements should be as consistent as possible between all States in a Region. Lack of consistency among State agreements can be a significant hindrance to Regional delegation management, particularly updating and revising the functional subagreements, which are identified in the umbrella agreement, and evaluating State performance based thereon. Consistency promotes more current agreements because they are easier to revise across the board and encourage equal treatment of States. Where Regional staff find a great deal of variety in format and content among the subagreements for their States, it would appear to be in the Region's own interest to make them as consistent as possible.

To ease the addition and deletion of subagreements (or material within subagreements) in accordance with the subpart I regulation and new Agency policy, and keep the functional subagreements current and consistent, Regions have developed several approaches to accomplish this.

- o Region VI maintains an ongoing task force that proposes revisions as needed. These are then circulated among all States. If the States agree that the revisions constitute an improvement, then the subagreements for all States change accordingly. Currently the Regional Administrator and a State cabinet officer must approve each change, but this is under review for possible change, too.

- o Region VIII has undertaken a major revision to subagreements by having each State attempt to draft one or more. These are then circulated to the other States and the Region for feedback. Final agreement is then hammered out at a meeting of all parties. This approach incorporates extensive input from the States, and the result is consistent across all States.

- o Region IV accepts requests from States to revise functional subagreements and circulates the revisions to all States for concurrence. The changes may be ratified by signature of the Water Management Division Director and each State program manager.

Despite this emphasis on maintaining current and consistent subagreements, the anticipated revisions will not be beneficial if they have a negative impact on the usefulness and value of the subagreements. The revised subagreements should continue to contain sufficient detail to assure that all federal requirements discussed in the delegation agreement are met, with the State performing as much of the preparatory work as legally possible. All subagreements should detail the relative responsibilities of each party in completing the larger program function. If an EPA review role exists, it should be referenced.

STRIVING FOR FULL DELEGATION IN FUNCTIONAL SUBAGREEMENTS

It is the goal of EPA for States to achieve full delegation of the construction grants program. If this is to happen, the functional subagreements must convey full appropriate authority to the States. In the case of many program activities, this has been done with minimal problems. There remain, however, lingering questions as to the definition of "full delegation" and significant divergence of opinion on how much delegated authority may be reflected in the functional subagreements for certain activities.

Delegation of the construction grants program is completed when 100% of the delegable responsibilities are assumed by the State, including preliminary determinations and staff work for those activities shared with EPA, as required by statute or regulation. EPA recognizes the present use of the Corps in the program. It is EPA's long-term to have delegated States assume

those activities now being performed by the Corps as soon as the State is able to do so.

Once delegation is completed, EPA's involvement in project-level activities should be limited to those functions required to discharge its national responsibility; to ensure the quality and direction of overall program performance (management and overview); and to those activities required by legislation or Agency regulation (shared activities).

Certain project-level activities are completely delegable to the States. While EPA originally performed these activities and may have shared responsibilities with the State during phase-in, Regions should have no role in project-level activities once full delegation has been achieved other than overview or review of particularly significant projects with our Overriding Federal Interest.

Other project-level activities are "shared" in that all requirements in the activity cannot be delegated to the States, even under full delegation, and responsibility for their execution is split between EPA and the State. For example, the State may process all Step 3/2+3 payments and amendments, while EPA retains the administrative workload of processing payment request forms and sending to Treasury for payment. Thus, Step 3/2+3 payments and amendments (a shared activity listed in Appendix A on page A-4) is considered fully delegated when a State is performing all delegable aspects of the activity. EPA retains a share of the responsibility for conducting this and other shared activities either because delegation is restricted by legislation or regulation (e.g., grant award) or because of the Agency's overall responsibility for program results (e.g., inquiry response). As a rule, responsibility for final determination of shared activities remains with EPA (as per Subpart J, Section 35.3015 of the regulations), but the individual steps necessary to ready these activities for final determination are delegable to the States. In this manner, EPA Regions and the States maintain a careful balance of responsibility for these activities.

A summary chart containing completely delegable and shared activities, their legal or administrative citations, and brief comments on State/EPA roles under full delegation, appears in Appendix A.

The following section identifies selected activities whose delegability has been the source of disagreement or confusion among the Regions, Headquarters, and States. It identifies of those aspects of a direct activity that the State assumes under full delegation, and those which EPA normally retains. EPA's role would be different for projects identified as having an overriding federal interest or on those rare occasions when EPA intervention is necessary to prevent waste, fraud, and abuse. Needless to say, EPA and State roles are not limited to those controversial activities described below. For a comprehensive description of the Agency's overview and program management responsibilities, as well as the States' program and project roles, see Chapter 1.

o Minority Business Enterprise Requirements (33.240)

Delegable Functions: MBE is a delegable function in which the State indicates six positive steps have been taken towards procuring minority and women-enterprises, when federal funds are used.

Region's Role Under Full Delegation: Program overview.

o Procurement Protests (40 CFR 33 Subpart G, 35.3015(c))

Delegable Functions: When State or EPA determinations are subjects of bid protests, the State prepares the necessary documentation of its decision-making process, and other pertinent information, to the grant recipient in order to assist the bid protest determination. (This applies to MBE, WBE, EEO, and other disputes/protests).

Region's Role Under Full Delegation: EPA retains the responsibility for making final determinations for all procurement protests.

o Financial Management System Review (35.2020, 35.2104, 35.2122)

Delegable Functions: State reviews financial and management capability of applicant. This includes ensuring that the user charge system will require users to pay their proportionate share and that the sewer use ordinance meets regulatory requirements.

Region's Role Under Full Delegation: Program overview.

o GICS: Data Collection and Entry

Delegable Functions: The State collects project information on an ongoing basis, and enters data into the Grants Information Control System (GICS) in response to semi-annual data requests. In addition, the State assists EPA in the management of the data base, including use of reports and updating.

Region's Role Under Full Delegation: EPA retains ultimate responsibility for management of the GICS system. In addition, EPA provides ongoing technical assistance.

o Environmental Review (40 CFR 6, 35.2113, 35.2030 and 35.3015

Delegable Functions: States review all documentation submitted by grantee to ensure that all federal requirements related to NEPA are satisfied and all environmental considerations are discussed in the selection of the proposed plan. States also prepare the documentation for EPA concurrence and issuance of the FNSI, including the draft environmental assessment.

Region's Role in Full Delegation: EPA is responsible for making determinations under NEPA including: (1) issuance of findings of no significant impact (FNSI), (2) need for an Environmental Impact Statement (EIS), (3) preparation of an EIS, and (4) final EIS-based decision and follow-up.

o Facility Plan Review (I/A and Land Acquisition) (35.2032 and 35.2210)

Delegable Functions: As part of the facility plan review delegated States conduct an I/A analysis and a review of any land acquisitions. The I/A review is needed to re-verify that the project or its components qualify for the Innovative/Alternative designation. The land acquisition review is conducted to certify that the actions taken to acquire any land for the project comply with EPA regulations.

Region's Role Under Full Delegation: Under full delegation EPA plays no automatic role in the facility plan review. EPA review would only be necessary to assure that no potential for waste, fraud, and abuse exists, and to prevent funding if any is found.

o AT Review (35.2101)

Delegable Functions: States provide staff work, conduct reviews, and make preliminary determinations of approvability of applications for advanced treatment projects. States may fully approve projects with AT costs less than $3 million when delegated the authority and provided the State has responsibility for facility planning.

Region's Role Under Full Delegation: For incremental AT costs of more than $3 million, the Region reviews State documents, and if in order, sends them to Headquarters. In accordance with Congressional direction, the EPA Administrator retains responsibility for making the final determination for projects with AT costs greater than $3 million.

o Audit Resolution (30.540, 30.802(c), 40 CFR 30 Subpart L, 35.3015(c))

Delegable Functions: In cases where there are construction grant audit exceptions, States perform all staff work, including preliminary decisions, and provide these to EPA. States also prepare amendments to grants and change orders as necessary.

Region's Role Under Full Delegation: EPA remains responsible for reviewing the State findings and issuing the final determination on audit exceptions. EPA is responsible for resolution of appeals (and to act as witness), to provide technical support and coordination with legal branch. EPA processes any changes to grants.

PROJECTS WITH OVERRIDING FEDERAL INTEREST

The need for EPA involvement in selected project-level decisions is recognized in Section 35.3015 as a necessary corollary to national program management and overview of the States. Although the delegation policy is to turn over all project administration to the States, certain projects, particular project aspects, or a specific project-level decision may continue to require federal involvement. This is particularly true of projects that are interstate in nature or are of special Congressional or Executive Branch interest. As a rule, however, the Regions should limit involvement in State decisions.

A partial listing of project conditions which may precipitate an overriding federal interest includes the following:

- o Projects subject to an Environmental Impact Statement;
- o Projects subject to special and/or complex eligibility considerations;
- o Projects subject to Congressional inquiry;
- o Projects involved in federal court cases or subject to other directives--e.g., consent decrees, ocean dumping restrictions, international agreements--that EPA must administer despite delegation;
- o Projects involved in law enforcement investigations or in allegations of waste, misuse, or mismanagement of federal funds;
- o Projects involving AT Reviews;
- o Projects affected by Marine Discharge waivers under Section 301(h); and
- o Projects having interstate or international impacts that go beyond State jurisdiction, interest, or influence.

Where statutory requirements call for direct EPA involvement in project decisions which have been delegated to the States, such involvement will be early in the process and be designed to assist and improve State management and to prevent unnecessary duplication or delay in the State process. EPA will also make its technical expertise available to States which request such assistance in complex cases.

CHAPTER 4

SPECIAL REGULATORY REQUIREMENTS

The construction grants delegation regulation (40 CFR Part 35, Subpart J) includes several specific requirements pertaining to EPA/State management of a delegated program. This chapter proposes a set of administrative procedures and definitions that are appropriate to implementing a number of these requirements. Where applicable, alternative approaches are suggested and examples given.

CERTIFICATION (SECTION 35.3020)

Change From Existing Requirements

As stated in the interim final Subpart I regulation, States are required to certify within the scope of their delegated authority that a project, or project component, meets the applicable federal requirements. Certification of State approval action will be provided on a project-by-project basis.

The revised construction grants delegation regulation (Subpart J, Section 35.3020) incorporates a concept of sufficient authority for certification from Section 219 of the 1981 Amendments. For States with such authority, EPA is required to act on applications within 45 days. If the Agency fails to do so, the grant is automatically approved. The current delegation agreement may need to be amended to show any changes in the EPA/State responsibilities for application review and documentation.

In order for a State to qualify for sufficient certification authority, the following pre-award activities should be fully delegated: Facilities Plan Review, Plans and Specifications Review, Engineering Subagreement Review, Environmental Review, Step 3 Application Review, and Financial Capability Review (for a regulatory reference for each of these, see Appendix A).

Guidance: Content and Format of the Certification

Certification serves as a formal approval and notification, documenting within the scope of authority delegated to the State that all applicable federal and State requirements have been met.

States with sufficient authority under Section 35.3020 need to forward only the relevant certifications and other documentation (such as the assistance application) required by the delegation agreement to the Region. Ordinarily, the application should have sufficient project-related information to satisfy any need of the Region.

Guidance: Recordkeeping and Project Documentation For States With Sufficient Authority

States with sufficient authority to certify that all federal requirements have been met should be maintaining the official project file. As States approach full delegation, less documentation should be routinely requested by EPA. Under full delegation, Regions should receive from the States only those project documents necessary for nondelegable determinations (e.g., NEPA documents, assurance of compliance with Title VI of Civil Rights Act, advanced treatment project information). Correspondence and individual project information (e.g., user charge systems, sewer use ordinances, facilities plans, plans and specifications, checklists, review forms, and other review documentations) which do not require action by the Regions, should not be forwarded with the grant application.

If the project is subject to special review because it is of overriding Federal interest, a specific request for additional documentation should be agreed to in advance by the Region and State.

REVIEW OF STATE DECISIONS UNDER DELEGATION (SECTION 35.3030)

Change From Existing Requirements

Aggrieved municipal applicants, grantees, and other affected parties may currently request the EPA Regional Administrator to review a State agency's action under delegation, without first requesting the State agency to reconsider its decision. Under the revised regulations, recourse to EPA by applicants, grantees, and participating municipalities will no longer be permitted unless the State has first been given an opportunity to review its initial decision.

This change in the handling of request for review of State decisions is meant to underscore the State's responsibility in project-level decisions and encourage the State to resolve most issues without EPA involvement.

Guidance: Process for Review of a State Decision and EPA's Function

Requests for State review may be handled as informally or as formally as dictated by applicable State statutes and other State requirements. A number of States, such as California and Pennsylvania, already have a process in place to re-review initial State decisions. States should consult with the Regions in determining the appropriate process for resolution. Although no specific process is prescribed, the State procedures should not require multiple levels of State administrative review beyond the State agency which made the initial decision, nor should they require State judicial review prior to providing the petitioner the opportunity to request the EPA Regional Administrator's review. Also, the procedures must be set forth in, or as an amendment to, the delegation agreement.

The State agency should normally be able to review the petition and issue its decision within 45 days of the date of receipt of the petition. However, this standard may be exceeded with good cause. In cases where 45 days is impractical because of institutional constraints, a normal time period should be agreed to in the delegation agreement. The State must write the specific reasons for its decision, label the decision as final, and inform the petitioner that it may request EPA Regional Administrator review under Section 35.3030 of the delegation regulation.

These requirements do not impose a duplication of effort at the State level but assure that the State thoroughly addresses the issue(s) raised and provides in writing a record of the legal and factual basis for its action or omission before the Regional Administrator becomes involved. Labeling the State decision as final notifies the recipient that no further State action is necessary before an EPA review may be requested. These requirements are to preserve the State's role under delegation, and failure of the State to address the disputed action or omission will not prevent review by the EPA Region.

The State decision should present the factual and legal (statutory and/or regulatory) basis for the decision and any precedents set by other similar projects or management activities, if applicable. Precedents may be set by EPA or State findings or EPA Regional Administrators' resolution of analogous situations. Regions should supply States with examples of appropriate precedents and other applicable information (e.g., allowable cost data addressed in handbooks, manuals, and Regional Administrator review decisions of State actions under delegation).

The petitioner must request EPA Regional Administrator review within 30 days of receipt of the State agency's final decision. It is recommended that the Region request that the petition contain the following information:

(1) Name and address of petitioner.

(2) Copy of the final decision of the State agency which the Regional Administrator is requested to review, and the date when the petitioner received it.

(3) The basis for the petitioner's request (manner in which the petitioner has been adversely affected).

(4) The specific action by the Regional Administrator which the petitioner requests.

(5) A statement of the evidence presented to the State agency prior to its final decision. Any evidence not presented to the State agency should be identified and accompanied by an explanation as to why it was not previously provided.

If the petition is incomplete and does not contain the information in (1) through (5) above, the Regional Administrator may at his/her discretion notify the petitioner what information is necessary to complete the petition, and the time within which an amended petition may be filed. If a properly amended

petition is not received by the Regional Administrator within the time allowed, the petition may be dismissed unless good cause is shown for an extension of time.

Upon the receipt of a proper petition, the Regional Administrator may take the following actions:

- o Refuse to review the State agency's final decision if the petition is late or raises issues which are not appropriate for Regional Administrator review; or
- o After review of the petition and the State agency's final decision:
  - Deny the petition upon finding the State agency decision was proper;
  - Set aside or modify the State agency decision; or
  - Request the State agency to take appropriate action.

Before making a final decision, the Regional Administrator may provide for an informal meeting as soon as possible between the petitioner, representatives of the concerned State agency, the EPA Region, and other concerned persons to resolve the dispute.

The Regional Administrator will issue a written final disputes determination as quickly as possible, which will inform the petitioner of the right to appeal to the EPA Administrator under CFR Part 30 (General Grant Regulations and Procedures).

CONSTRUCTION GRANTS ACTIVITIES ELIGIBLE UNDER A SECTION 205(g) CONSTRUCTION MANAGEMENT ASSISTANCE AGREEMENT (SUBPART A)

Guidance: Current Interpretation of Eligible Activities

EPA has construed "administration" of the construction grants program in the regulation (40 CFR 35, Subpart A) very broadly in line with the intent of Congress. For the construction grants program, the definition of administration encompasses all activities that are necessary to assure that a wastewater treatment plant is planned, designed, and built in the most cost-effective manner in accordance with all applicable federal requirements to achieve the goals of the Clean Water Act. (See Appendix C for a suggested list of activities allowable under a construction management assistance grant. The list is limited to construction grants and is not necessarily all inclusive.)

This broad interpretation of what constitutes construction grants management by the delegated States has made a specific listing of eligible activities inappropriate in the delegation management regulation. Activities necessary for "administration" of the program may vary depending on the management

approach of the State and Region or the priorities and emphasis of the Administrator. Eligibility determinations are based on the regulatory requirements contained in Subpart A and the administrative history of the program. These determinations may be subject to interpretation and may be subject to audit.

Because of this broad-based approach, examples of eligible activities are detailed in Appendix C. These activities will generally fall within the categories shown below.

Categories of Eligible Construction Grant Activities

- Program Management--General activities that are needed to plan and implement the requirements of the construction grants program in a particular State (i.e., developing funding priorities, public participation, program coordination, effective management practices, and staff supervision).

- Project Management--All activities related to (1) the funding of high-priority projects that enhance water quality and public health and (2) the administration of those projects in a manner that assures it is designed and constructed to meet the highest level of engineering standards and preserves fiscal integrity.

- Indirect Costs--The application of an overhead expense is allowable under an approved indirect cost flow developed in accordance with OMB Circular A-87.

PUBLIC PARTICIPATION (SECTION 35.3035)

Change from Existing Requirements

Public participation requirements are changed somewhat to permit more flexibility while continuing to assure that Regional and State efforts to inform the public are appropriate. Public notice requirements during the development of important documents was retained and expanded to include the overview program. The old regulations required delegated States to provide resources to oversee public participation, to hold a public meeting or workshop in conjunction with EPA's annual review of State program accomplishments, and to prepare fact sheets and responsiveness summaries. These specific requirements were removed and replaced with a requirement for public notice and a determination of public interest prior to scheduling a meeting. EPA and the States however, should jointly seek innovative ways to continue to provide for, encourage, and assist public participation in construction grants delegation.

Guidance: Process for Meeting Public Participation Requirements

The Regional Administrator and the State agency director should consult informally with any interested or affected groups when preparing or substantially amending delegation agreements and developing the annual overview program. These informal consultation mechanisms may include but are not limited to review groups, ad hoc committees, task forces, workshops, seminars, and informal personal communications with individuals and groups that have indicated an interest.

A public meeting, rather than the current, more formal hearing, will be held only if the Regional Administrator or the State agency director determines that significant interest exists. To determine whether or not there is significant interest, EPA or the State must notify the public (1) when the initial delegation agreement is being developed, (2) when substantially changing the agreement, and (3) when the annual overview program is being developed. A copy of the proposed documents must be made available at the Regional and State Agency Offices sufficiently in advance of EPA execution to allow for timely comment. The public meeting, which may be held in conjunction with the State/EPA agreement, should precede Regional Office approval by at least 30 days.

Public meetings are less formal than public hearings and do not require formal presentations, scheduling of presentations, or a record of proceedings. However, the notice of the public meeting should be provided no less than 30 days before the meeting is scheduled. Also, the notice should identify the matters to be discussed and should include or be accompanied by a discussion of the tentative determination of major issues (if any) in the delegation agreement or amendment, information on the availability of any relevant materials (if appropriate), and procedures for obtaining further information. Also, the meeting should be held at times and places which, to the maximum extent feasible, facilitate public attendance. Public transportation and evening and weekend scheduling should be considered.

The State's performance of delegated construction grants program functions and activities shall comply with all applicable federal public participation requirements. Requirements and suggestions for public participation are provided in Construction Grants-82 for facilities planning (Part 3.1, Public Participation, and Part 7.10, Views of the Public and Concerned Interests).

CHAPTER 5

NATIONAL INFORMATION NEEDS AND REPORTING

In order to fulfill the mandate as national program manager of the construction grants program, EPA has a continual need for management information. The sources for most of this information remain the delegated States, which under full delegation retain the project files and manage the program on a day-to-day basis. Routinely, EPA Headquarters has a need for two types of information:

- o Project-specific information that is used to meet management requests for project-level and summary program data, and
- o Summary management and planning data, which is used for projections in subsequent fiscal years.

In both cases, the form, content, and frequency of information requests should be clearly set forth in the delegation agreement.

Aside from routine data needs, it is inevitable that unanticipated information requests will be made. Often, these data will be used to comply with requests from Agency management, OMB, and the Congress. The delegation agreement should address the responsibilities of each party when this circumstance arises. Specific procedures for responding to unanticipated data requests should be included in the delegation agreement, as necessary, to avoid delay or confusion when requests to States become necessary.

The OMB information collection clearance Number 2000-0417, provided for under the Paperwork Reduction Act, and the expiration date of June 30, 1986 should be placed in the upper right hand corner of all information requests under Subpart J and this guidance. This signifies that the Office of Management and Budget has reviewed the information collection requirements for this regulation and issued a clearance for three years. The clearance covers requests made under Subpart J by both EPA and the States.

PROJECT-SPECIFIC INFORMATION

Ongoing project-specific information is assimilated into the Grants Information Control System (GICS), and involves a continual data collection process. GICS provides information to users at all management levels. The integrity and reliability of GICS can only be maintained through the ongoing, prompt, accurate, and continuous collection and entry of all required data elements. Consequently, GICS data collection and entry should be a mandatory delegable function, and the data responsibilities of the parties should be clearly delineated in the subagreements.

SUMMARY MANAGEMENT AND PLANNING DATA

Summary management and planning data are collected through a data request that is issued twice annually, coinciding with the beginning and midpoint of the federal fiscal year. This information is primarily used to plan and prepare the Agency's annual budget proposal to OMB. The resulting data also provide input for the EPA Administrator's Accountability System and is used to respond to various information requests from within EPA, and from other Federal agencies and Congress. The information collection burden has been reviewed and approved by OMB under the terms of the Paperwork Reduction Act of 1980.

Summary management and planning data requested are generally of three types:

- Delegation Schedule--The delegation schedule contains a standard list of delegable activities for all States and Territories.

- Workload Data--Workload data are requested, by State, for three years (the current year, planning year, and budget year) on priority program activities (awards, completions, etc.).

- 205(g) Budget Data--Budget and resource planning data for Section 205(g) funds are requested for each State.

APPENDIX A

THE DELEGABILITY OF CONSTRUCTION GRANTS ACTIVITIES

APPENDIX A

THE DELEGABILITY OF CONSTRUCTION GRANTS ACTIVITIES

Model Activities	Legal/Administrative Authority	Ability to Delegate	Roles Under Full Delegation
1. PRE-STEP 3 ACTIVITIES			
A. Steps 1 and 2 Payments and Amendments	35.2300 35.2204 35.2206 35.3015(a)(c)	Shared	State processes payments and amendments, while EPA must accept state certification of payment form, and direct Treasury to pay. EPA must also make final determination and process amendment awards.
B. Facility Plan Review**	35.2030 35.2032 35.2034 35.2102 35.2118 35.2120 35.2210 35.3035	Delegable	State reviews facility plan, including I/A analysis, SSES, I/I, CSO project review, land acquisition, and public participation.

SOURCES: 40 CFR 30, 40 CFR 33, 40 CFR 35, "Draft Activity Definitions for the Construction Grants Resource Model" (April 1982), "Construction Grants 1982" (July 1982), and interviews with HQ and Regional officials.

---

*"Procedure" indicates an actual program activity without a regulatory citation, but one which may facilitate the performance of another activity which is prescribed by regulation.

**Indicates those activities for which a detailed breakdown of State and EPA roles under full delegation appears in Chapter 3.

Reproduced from best available copy.

Model Activities	Legal/Administrative Authority	Ability to Delegate	Roles Under Full Delegation
1. PRE-STEP 3 ACTIVITIES, continued			
C. AT Review**	35.2101	Shared	State performs complete review for projects with less than $3 million in incremental AT costs. For the larger AT projects, State performs initial review, while EPA retains responsibility for making the final determination of the approvability of AT costs.
D. Environmental Review	35.2113 35.2030 35.3015(c) 40 CFR 6	Shared	State accepts delegation for everything except NEPA-related decisions, which must remain with EPA.
E. Step 2+3 Application Review and Award	35.2109 35.2040(a) 35.2202 35.3015(c)	Shared	State reviews technical and administrative application documents, and processes documents, necessary for assistance award. EPA must make final review of the application, and final determination of award.
F. B&C Review	35.2040	Delegable	State conducts all activities.
G. Technical/Administrative Review of Plans & Specs	35.2040 33.255	Delegable	State conducts all activities.

Model Activities	Legal/Administrative Authority	Ability to Delegate	Roles Under Full Delegation
2. CERTIFICATION REVIEW & STEP 3 AWARD			
A. Step 3 Application Review and Award	35.2024 35.3015(c)	Shared	State reviews technical and administrative application documents and processes documents necessary for assistance award. EPA must make final review of the application, and final determination of award.
B. Financial Management System Review**	35.2020 35.2024 35.2122 35.2104	Delegable	State conducts all activities.
C. Engineering Subagreement Review**	35.2042(a) 33.240 35.115	Delegable	State conducts all activities, including MBE/WBE.
D. Engineering Subagreement Self-Certification Review	33.110 33.115	Delegable	State conducts all activities.
3. STEP 3 PROJECT ACTIVITIES			
A. Preconstruction Conference and Bid Package Review	33.115 33.240	Delegable	State conducts all activities, including MBE/WBE.
B. Procurement Protests/ Appeals**	40 CFR 30 and 33 (Subpart G) & 35.3015(c)	Shared	Protests: State prepares necessary documentation and resolution of MBE, WBE, EEO, and other protests. EPA makes final determinations on all protests that cannot be resolved by the State. Appeals: States provide all necessary information and support to EPA for use in its own deliberations on assistance appeals.

Model Activities	Legal/Administrative Authority	Ability to Delegate	Roles Under Full Delegation
3. STEP 3 PROJECT ACTIVITIES, continued			
C. Interim Inspection	35.2216	Delegable	State conducts all activities.
D. Interim Audit Resolution	35.3015(c) 30.540 30.802(c)	Shared	State assists in determining the validity of audit exception, and writes responses to audit. EPA retains responsibility to issue the final determination and review state findings.
E. Change Orders	35.2204 33.1030	Delegable	State conducts all activities.
F. Step 3/2+3 Payments and Amendments	35.2103 35.2204 35.2300 35.3015(c)	Shared	State processes payments and amendments, while EPA retains the administrative workload of processing payment request forms and sending to Treasury for payment.
G. On-Site Presence	35.2216	Delegable	State conducts all activities.
H. O&M Manual Review and Plan of Operation Review	35.2206(a)	Delegable	State conducts all activities.
4. PROJECT COMPLETIONS/CLOSEOUTS			
A. Final Inspection and Project Completion	35.2216	Delegable	State conducts all activities.
B. Engineering Performance Certification Review	35.2214	Delegable	State conducts all activities.

Model Activities	Legal/Administrative Authority	Ability to Delegate	Roles Under Full Delegation
4. PROJECT COMPLETIONS/CLOSEOUTS, continued			
C. Administrative Completion	35.2212	Shared	EPA must review for completeness, process final assistance agreement, and transmit to audit.
D. Final Audit Resolution and Appeals Process**	35.3015(c) 30.540 30.802(c)	Shared	State assists in determining the validity of audit exception, and writes responses to audit. EPA retains responsibility to issue the final determination and review state findings.
E. Grant Closeout	40 CFR 30 Subpart H	Shared	State conducts all activities, except that EPA must officially close the financial and administrative files.
5. REGIONAL PROGRAM MANAGEMENT			
A. Inquiry Response	(procedure)*	Shared	Both state and EPA may respond to project and non-project requests for information. EPA maintains full role in responding to congressional requests, and those with overriding federal interest.
B. Data Collection and Entry for Delegated Activities**	(procedure)*	Delegable	State conducts all activities.

APPENDIX B

REGION V

CONSTRUCTION GRANTS PROGRAM AND MANAGEMENT OBJECTIVES

APPENDIX B

REGION V

CONSTRUCTION GRANTS PROGRAM AND MANAGEMENT OBJECTIVES

The following list of programmatic and management objectives may be useful in the development of Regional plans for overview. It was extracted from a comprehensive list of objectives prepared by Region V. This list is included as a sample, and does not necessarily reflect all portions of this guidance. Those objectives marked with an asterisk are Regional priority objectives for FY'83.

Program Objectives

* 1. To ensure that the highest priority treatment facilities are expeditously constructed to achieve the maximum environmental benefit.

* 2. To ensure that municipalities evaluate feasible alternatives for treatment facilities and select the most cost-effective alternative to meet water quality and public health requirements.

* 3. To ensure planning, design and construction of treatment works that can be operated and maintained by municipalities to meet permit effluent limitations and public health requirements.

* 4. To ensure that the potential environmental effects of construction grant projects are described and considered by municipal, regional, State and EPA project decisionmakers to minimize potential adverse impact of projects on the environment and the public.

5. To ensure that construction of advanced treatment facilities will produce significant water quality and public health improvement.

6. To identify and encourage the use of innovative and alternative treatment technologies that reduce costs, conserve energy and recycle and recover waste.

7. To encourage the planning of integrated facilities that treat, dispose of or utilize industrial and municipal wastes to maximize the benefits of funds expended for wastewater treatment facility construction.

* 8. To ensure that municipalities have self-sufficient financial management systems to support municipal treatment facility construction and operation.

Management Objectives

* 1. To ensure that the public is informed and has the opportunity to provide input on issues related to treatment facilities projects, and that this input is considered by decisionmakers.

* 2. To delegate responsibility and develop the capability for management of the construction grants program to States that are willing and able to assume delegation.

* 3. To improve the construction grants program planning and implementation.

* 4. To maintain and provide Federal/State expertise necessary to address high priority environmental/program problems.

* 5. To ensure the construction grant program operates as an integral part of a total water media program which includes water quality standards, water quality planning, NPDES permits, ambient and compliance monitoring, and enforcement functions, in order to improve municipal compliance with permit effluent limitations.

6. To prevent fraud, abuse, waste and mismanagement and identify and correct causal activities.

* 7. To accurately project outlays in order to ensure the validity of the national budget for construction grants.

8. To provide financial assistance to State pollution control agencies to manage the construction grants program.

APPENDIX C

ALLOWABLE COSTS UNDER CONSTRUCTION MANAGEMENT ASSISTANCE (CMA) AGREEMENT

APPENDIX C

ALLOWABLE COSTS UNDER CONSTRUCTION
MANAGEMENT ASSISTANCE (CMA) AGREEMENT

This Appendix proposes a list of potential assistance eligible functions and activities under 205(g), based on an analysis of the construction grants regulation (40 CFR 35, Subpart I including 40 CFR 33), the construction grant program management delegation regulation (Subpart J), the Clean Water Act, EPA policy, and reasonableness. It supplements the appropriate Federal cost principles under 40 CFR 30, Section 30.410 provided in OMB Circular A-87.

The eligible functions and activities apply to federal assistance awarded on or after the effective date of the construction grants program delegation regulation. This list is for construction grants only, and is not necessarily all inclusive. Allowable costs under the Subpart J regulations are not limited to the items listed in this Appendix. Additional cost determinations based on applicable law and regulations must be made on individual items which must be included in the delegation agreement.

The bulk of the activities listed fall under project management; those marked with an asterisk are program management activities.

FEDERAL ACTIVITIES DELEGATED

These are construction grants-related activities which EPA has responsibility for performing and which can be delegated to States.

Pre-Step 3 Activities

- Review facilities planning, covering plan contents as provided by 35.2030.
- Ascertain applicable statutory and regulatory requirements within the scope of delegation (including Part 6) for facility planning have been met prior to award. (Section 35.2030)
- Make early determinations under Part 6 of the appropriateness of a categorical exclusion, scope of EID, or early preparation of an EIS, if requested by potential applicant. (Sections 35.2030 & 35.2113)
- Ascertain facilities planning related to project has been substantially completed, and condidate project for award will not be significantly affected by completion of the facilities plan and will be a component part of the complete treatment system (for Step 2+3 award). (Section 35.2030)
- Review and determine that applicant completion schedule for facilities plan is acceptable and is a special condition of the assistance agreement. (Section 35.2030)

- Review assistance application for adequacy of information required in Part 30, Subpart B. (Section 35.2040)
- Review Step 2+3 application to determine if all requirements of Part 35, Section 35.2040(a) have been met.
- Review Step 3 application to determine if all requirements of Section 35.2040(b) have been met.
- Review projects using I/A technology. (Section 35.2032)
- Review projects for privately owned individual systems. (Section 35.2034)
- Review applications for awards for preliminary Step 3 work in emergencies or to prevent significant cost increases. (Section 35.2118)
- Execute preliminary reviews and determinations of approvability of advanced treatment (AT) projects. (Section 35.2101) Final determinations are reserved to EPA.
- Prepare assistance agreement offer and amendment forms (EPA forms 5600-20A and 5700-20B).
- Review recipient offer price on real property for grant award. (Section 35.2210)
- Review applications for end results of field testing (Section 35.2262).
- Review applications for relocation assistance under Section 4.502(c) in accordance with Parts 30 and 35 (Subpart I). (Section 35.2300)
- Review I/I and system rehabilitation information from grantees.
- Review plans and specifications for conformance to federal requirements.
- Review facility plans and plans and specifications (designs) for operability.
- Review compatible industrial waste information under Section 35.2125.
- Review and approve pretreatment programs.
- Review applications for a marine waiver discharge under Section 301(h). (Section 35.2112)
- Estimate Federal share of project cost. (Section 35.2152)

- Review the adequacy of the proposed training and operations supervision as a part of the Step 3 application review. (Section 35.2214(c))

Pre-Step 3 & Step 3

- Provide technical and legal assistance in administering and enforcing subagreements. Intervene in any related civil action. (Section 35.2350)

- Determine eligible and allowable costs. (Section 35.2250, Appendices A & B)

- Review proposed procurement actions (contracts/change-orders) if systems are not certified (Part 33).

- Manage small communities waste treatment construction grants programs by serving as contracting agents for negotiating and administering subagreements, providing technical advice, and assisting resident engineering.

Certification Review & Step 3 Award

- Review UC systems and proposed sewer use ordinances. (Section 35.2122)

Step 3 Project Activities

- Determine if the recipient has expeditiously initiated and completed the project according to the project schedule in the assistance agreement. Notify EPA of any significant recipient failures. (Section 35.2212)

- Determine if the recipient has promptly initiated procurement action after Step 3 award or approval of information required under a Step 2+3 grant. Secure notification from recipient of subagreement award for building all significant elements. (Section 35.2212)

- Review and approve the recipient's plan of operation and O&M manual, user charge system and sewer use ordinance. Advise Regional Administrator of approval of recipient's final submissions of such items for payment determinations. (Sections 35.2106 & 35.2206)

- Assure recipient has adopted its sewer use ordinance and implemented its UC system before treatment works operation. (Section 35.2208)

- Review recipient payment requests under Part 30. (Section 35.2300)

- Review change orders for operability.

Step 3 Completions and Closeouts

- Receive recipient notice of project completion; perform final inspections within 60 days of receipt. (Section 35.2216)

- Receive refunds, rebates, credits, and other receipts by recipient. Transfer to EPA for crediting to the current State allotment. Review and approve recipient's reasonable expenses in securing such funds. (Section 35.2300)

- Review recipient certifications of project capability to meet its performance standards one year after initiating operation. Review recipient submissions that are required if project fails to meet its performance standards. Oversee recipient corrective actions. (Section 35.2214)

- Review and approve follow-up A-E efforts during the year following operation start-up. (Section 35.2214(c))

- Initiate remedial action in case recipient fails to carry out its obligations. (Section 35.2214)

Other

- Perform one-time O&M inspection prior to recipient certification of performance.

- Review O&M at individual completed (assistance agreement funded) plants to support permit or assistance agreement condition enforcement.

- Coordinate permit and enforcement activities with construction grants program (Municipal Management Strategy).

- Technical assistance for appeals in bid protests and assistance appeal actions.

- Maintain data base for GICS as applicable.

STATE-SPECIFIC ACTIVITIES

These are construction assistance agreements-related activities which the States only have responsibility for performing.

Project Planning Oversight

* Develop and revise priority system and annual project priority list, and conduct required public participation. (Section 35.2015)

* Establish reserves from State's allotment and request approval of uniform reduction of Federal share of State assistance, if desired. (Sections 35.2020 & 35.2152)

* Review and determine whether project could be dropped from the priority list if improvements were made in O&M at existing facilities. Provide technical assistance as necessary. (Section 35.2030(b)(3)(iii)

Pre-Step 3 Activities

- Prepare assistance applications for combined sewer overflow (CSO) projects in priority water quality (WQ) areas, including marine areas. (Section 35.2024)

- Demonstrate WQ benefits of the proposed CSO project in priority WQ areas, including marine areas (Section 35.2024)

- Prepare State application for advances of allowance to potential applicants (including small communities) for facilities planning and design; handle payments to recipients; recover advances, if necessary. (Section 35.2025)

- Certify adequate public participation based on State and local laws in projects for which Step 2+3 and Step 3 applications are submitted. (Section 35.2040)

Project Certification

- Prepare project funding priority certifications. (Section 35.2042)

- Prepare project-by-project certifications that applicable Federal requirements within the delegated authority have been met. Retain support documentation, as specified in the delegation agreement, and make it available to the Regional Administrator, upon request. (Section 35.2042)

OTHER ELIGIBLE STATE ACTIVITIES

* Conduct State construction grant program that is funded without Federal assistance, if the Regional Administrator determines the program is administered consistent with the Federal requirements (40 CFR 35 Subparts, F and I).

* Manage delegation agreement, including staffing and training.

* Prepare State applications for training facilities and training program assistance under Section 109(b) and for State advances of 109 allowances under Section 201(1) of the Act. (Section 35.0225)

* Develop program outputs, direct the accomplishment of the outputs, and track output status.